

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No. 201123871
Issue No. 2009 4031
Case No. [REDACTED]
Hearing Date: May 23, 2011
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on May 23, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED] Specialist, appeared and testified.

ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 8/20/10, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 11/15/10, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4) and DHS subsequently denied Claimant's application for MA and SDA benefits.
4. On 3/4/11, Claimant requested a hearing (Exhibit 1) disputing the denial of SDA and MA benefits.

5. On 4/11/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 58-59).
6. As of the date of the administrative hearing, Claimant was a 47 year old man (DOB [REDACTED]) with a height of 6'0 and weight of 200 pounds.
7. Claimant has no known relevant history of smoking, alcohol or drug usage.
8. Claimant is a high school graduate and completed two years of college.
9. Claimant claimed to be a disabled individual based on the following impairments: musculoskeletal problems with his neck, back, knee and shoulder and post-traumatic stress disorder (PTSD), issues from a closed head injury and pain disorder.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RTM).

The undersigned will refer to the DHS regulations in effect as of 11/2010, the estimated month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

BAM 600 covers the DHS policy for administrative hearings including deadlines for clients to file hearing requests. Clients have 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 at 4.

In the present case, there is evidence that Claimant may have untimely requested a hearing. DHS did not submit verification of when the written notice denying SDA and MA benefits to Claimant was mailed but the evidence points to a date of 11/20/10; Claimant's Request for a Hearing (Exhibit 1) lists a notice date of 11/20/10. Assuming Claimant used the notice denying his SDA and MA benefits to request a hearing, the date of written notice would have been 11/20/10.

Claimant did not request a hearing until 3/4/11. 3/4/11 is more than 90 days following the written notice of denial date. Unfortunately, the issue was not raised prior to or during the administrative hearing. Thus, Claimant was not given a reasonable opportunity to defend against the issue. The undersigned is not inclined to summarily

dismiss Claimant's hearing request based on a procedural issue when the issue was not raised by DHS and Claimant was not given an opportunity to defend against the issue. Accordingly, Claimant's hearing request will not be dismissed for a potential lack of timeliness.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* Adult Medical Program is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories but is not always offered to new applicants. It was not disputed that Claimant's only potential category for MA benefit coverage would be for Medicaid as a disabled individual.

Disability is established if one of the following circumstances applies:

- By death for the month of death.
- The applicant receives Supplemental Security Income (SSI) benefits.
- SSI benefits were recently terminated due to financial factors.
- The applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances). BEM 260 at 1-2.

It was not disputed that none of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual.

Generally, state agencies such as DHS must use the same definition of disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does ALL of the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process is to consider a person's current work activity. 20 CFR 416.920 (a)(4)(i). If a person is performing SGA, then the person must be found not disabled. In the present case, it was not disputed that Claimant was not employed at the time of the application or at the time of the administrative hearing. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities includes: physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling); capacities for seeing, hearing, and speaking; understanding; carrying out, and remembering simple instructions; use of judgment; responding appropriately to

supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

Generally, federal courts have imposed a mere de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v. Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment when the medical evidence establishes only a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

Claimant alleged disability based on various musculoskeletal problems with his back, neck, ankle and left shoulder. The medical evidence also supports mental impairments stemming from PTSD related to a murder of a biological child and pain disorder. The undersigned will first evaluate Claimant's physical obstacles.

Claimant testified that the pain caused by his musculoskeletal problems causes him restless sleep. He testified that his knee has given out causing him to fall; Claimant explained he walks with a cane to help prevent future falls. An examination report (see Exhibit 45) indicates Claimant's usage of the cane was temporary.

A medical examination dated 8/31/10 (see Exhibits 12-13) tended to support a finding that Claimant's ankle is not a serious impairment. The examining physician described Claimant's ankle as "stable" and "improving".

A Medical Examination Report (MER) (see Exhibits 14-15) dated 9/2/10 gave a less rosy outlook for Claimant's condition. The examining physician provided an impression of "deteriorating" concerning all of Claimant's conditions. The report offered little other guidance.

Another examination was performed on 9/28/10 (see Exhibits 43-45). The undersigned found this documentation to be the most thorough of the examination medical documents. Concerning cervical spine, the examining physician, [REDACTED] documented tenderness to palpation of the bilateral and lumbar paraspinal muscles which supports a conclusion of back pain by Claimant. It was noted that Claimant complained of pain in the right shoulder. The examiner considered Claimant's back, neck, shoulder and lower extremities in the report. [REDACTED] listed the following impression: "right greater than left

neck pain with right upper extremity paresthesias”, “left ankle injury status post fall in July of 2010” and “left shoulder limited range of motion secondary to AC separation as a child.” The examiner concluded Claimant had “marked arthritic changes at the glenohumeral joint” in his left shoulder (Exhibit 48) and a limited range in all motions related to the cervical spine and lumbar spine movements.

Based on all of the medical evidence, there is a sufficient amount of evidence to support that Claimant’s impairments meet or exceed the de minimus standards to move beyond step two of the disability analysis. The analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant’s impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant’s impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

The undersigned first considered Claimant’s back pain as a listed impairment. The listing reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

Or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

An inability to ambulate effectively is defined as “an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual’s ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined

generally as having insufficient lower extremity functioning.” The medical evidence did not support finding that Claimant met any of the above criteria necessary to meet the listing for a disorder of the spine. The undersigned also considered whether Claimant met the listing for post-traumatic stress disorder (an anxiety disorder) which reads:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning;or
2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

Again, the medical evidence does not support a finding that Claimant's impairment met the listing. Claimant's psychiatric evaluation cited Claimant had none of the following symptoms: apprehensiveness, irrational fears, panic attacks, paranoia, obsessions or compulsions. It is found that Claimant failed to meet a listed impairment and cannot be said to be disabled at step three of the analysis. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

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Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant's past employment involved working for [REDACTED] as a bookkeeper (from 2000-2001), as a direct care worker from 1998-2001. Oddly, Claimant listed both of these jobs on a form requesting employment history (see Exhibit 9) but gave no testimony concerning these jobs. Claimant actually stated he worked on fixing houses during this time period. The undersigned will accept Claimant's testimony as an accurate description of his employment history.

Claimant described his house repair duties as painting and repairing whatever needed to be done to homes. He states he had significant lifting, standing and bending that was required in his duties. Based on claimant's description, the undersigned finds that the work most closely resembles medium work.

As previously stated, Claimant had limited range of motion in all back movements. There was also documentation of muscle spasms in his back (see Exhibit 27). Though the undersigned failed to note medically prescribed physical limitations, the records

support a finding that Claimant was sufficiently limited to be unable to perform a level of medium work. Thus, the analysis may move to step five.

In the fifth and final step of the disability analysis an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 48 years, thus, considered to be a younger individual for purposes of disability. Claimant has a high school education and a work history of unskilled work. Disability is found if an individual is unable to adjust to other work. *Id.*

At the fifth step in the analysis, the burden shifts from Claimant to DHS to present proof that Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c)

In the present case, it was determined that Claimant passed step four based, in part, on the finding that he could not perform medium level work. It must still be determined at what level Claimant can perform work.

Based on the finding that Claimant is not physically capable of performing medium work, it can only be found that Claimant is capable of light work or less. The undersigned will reserve any further findings on his exertional impairments.

The Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV) describes GAF as a scale used by clinicians to subjectively rate the social, occupational, and psychological functioning of adults. Claimant was assessed a GAF score of 39 (see Exhibit 55) which is representative of "some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school)." The score was supported by a diagnosis that Claimant suffered from Post-Traumatic Stress Disorder (PTSD), acute.

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The PTSD was supported by various evidence such as Claimant's complaints of headaches, depression from physical pain, poor self esteem and poor motivation and impaired insight. There is no medical evidence to signify that the impairment is for a limited duration.

Based on the totality of the evidence, the undersigned is inclined to find that Claimant's exertional and non-exertional impairments render Claimant capable of less than a sedentary level of work. As Claimant is incapable of performing even sedentary employment for a duration of 12 months, it may only be found that Claimant is a disabled individual. Accordingly the DHS finding that Claimant was not a disabled individual was improper.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).


The undersigned has already found Claimant to be disabled for purposes of MA benefits by finding that Claimant has mental impairments expected to last one year or more. This finding makes Claimant automatically eligible for SDA benefits based on the lesser 90 day requirement. It is found that DHS improperly denied Claimant SDA benefits based on the finding that Claimant was not a disabled individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application requesting SDA and MA benefits. It is ordered that DHS:

- reregister Claimant's application dated 8/20/10 for MA and SDA benefits;
- process Claimant's application based on the finding that Claimant is a disabled individual; and
- supplement Claimant for any benefits not received as a result of the improper denial.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 20, 2011

Date Mailed: June 20, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CG/ctl

cc: 
Wayne County DHS (49)/1843



Christian Gardock
Administrative Hearings